

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARIO WILSON,

Plaintiff,

v.

POOR,

Defendant.

CASE NO. C19-5920 BHS

ORDER DECLINING TO ADOPT  
REPORT AND  
RECOMMENDATION AND  
SETTING DEADLINE FOR  
AMENDED COMPLAINT

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 28, and Plaintiff Mario Wilson’s objections to the R&R, Dkt. 29.

On January 10, 2021, Wilson filed a motion seeking to withdraw his 28 U.S.C. § 1983 complaint. Dkt. 26. Wilson originally sought to voluntarily dismiss his claims to refile at a later period, asserting that he was restricted from pursuing his litigation thoroughly by the circumstances of the COVID-19 pandemic in his correctional facility. Judge Fricke thus recommended that the Court grant Wilson’s unopposed motion and dismiss the action without prejudice. Dkt. 28.

1 In March 2021, Wilson then filed an objection to the R&R, indicating that he is no  
2 longer in quarantine, has fully recovered from COVID-19, and can pursue litigation  
3 thoroughly. Dkt. 29. He thus objects to the R&R and wishes to continue the litigation.  
4 Defendant does not object to Wilson's withdrawal of his motion to voluntarily dismiss  
5 the case but requests that the Court set a new deadline for Wilson to file his amended  
6 complaint. Dkt. 30.

7 The district judge must determine de novo any part of the magistrate judge's  
8 disposition that has been properly objected to. The district judge may accept, reject, or  
9 modify the recommended disposition; receive further evidence; or return the matter to the  
10 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

11 As Wilson now seeks to withdraw his original motion of voluntary dismissal and  
12 Defendant does not oppose that request, the Court declines to adopt the R&R due to the  
13 change in circumstances. Wilson's motion for voluntary dismissal, Dkt. 26, is denied as  
14 moot. Wilson's amended complaint is due by **May 21, 2021**.

15 **IT IS SO ORDERED.**

16 Dated this 15th day of April, 2021.

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19 BENJAMIN H. SETTLE  
20 United States District Judge  
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